IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.2358 OF 2006

Mr. Vinod B. Dalvi .... Petitioner.

V/s

State of Maharashtra & Anr. ....Respondents.

Ms. Shubhangi Chavan i/b Mr. A.M. Saroagi for the Petitioner.

Mr. Y.M. Nakhwa, APP for the State.

CORAM: V.M. KANADE, J.
DATE : 24th August, 2007

P.C.:

1. Heard the learned Counsel appearing on behalf of the Petitioner.

2. Petitioner is challenging the order passed by the Metropolitan Magistrate who was pleased to release Respondent No.2 on bail in a complaint which is registered against Respondent No.2 under the provisions of Sections 420, 467, 471, 474 of the Indian Penal Code.

3. Petitioner seeks cancellation of bail which was granted by the Metropolitan Magistrate. Petitioner had challenged the said order of grant of bail by the Magistrate by filing a Misc. Application in the Sessions Court. However, the said Misc. Application is also rejected. Being aggrieved by the aforesaid orders, Petitioner has filed this

Petition under Article 227 of the Constitution of India.

4. The learned Counsel appearing on behalf of the Petitioner submitted that the Magistrate was not competent to grant bail to Respondent No.2 particularly when the offences which were alleged to have been committed by Respondent No.2 were punishable with life imprisonment. It is submitted that a cryptic order was passed by the Magistrate. It is further submitted that the Sessions court, after having noticed the illegality which was committed by the Metropolitan Magistrate, did not cancel the bail and, however, confirmed the order passed by the Magistrate. It is submitted that it has been held by this Court and the Apex Court that the Magistrate is not empowered to release a person who is alleged to have committed an offence punishable with life imprisonment.

5. I have perused the impugned order. It is no doubt true that the Metropolitan Magistrate has passed a cryptic order, releasing Respondent No.2 on bail. However, the Sessions Court in Misc. Application filed by the Petitioner has considered and scrutinized the documentary evidence on record and has observed that no case was made out justifying cancellation of bail. The Sessions court has further observed that the complainant had not made out a case that the accused was likely to abscond or he was likely to tamper with the evidence. It is a well settled position in law that the order for cancellation of bail, normally, ought not to be passed by the Court unless there are compelling reasons which are established by the complainant.

6. Hence, in my view, no case is made out for interfering with the order passed by the lower Courts. Writ Petition is accordingly dismissed. However, liberty is granted to the Petitioner to apply for cancellation of bail in the event Respondent No.2 tries to tamper with the evidence or threaten the witnesses.

(V.M. KANADE, J.)